SPECIAL MESSAGE

OF

PRESIDENT PIERCE

TO THE

SENATE OF THE UNITED STATES:

MAY 3, 1854.

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MESSAGE.

TO THE SENATE OF THE UNITED STATES:

The bill entitled "An act making a grant of public lands to the several States for the benefit of indigent insane persons," which was presented to me on the 27th ultimo, has been maturely considered, and is returned to the Senate, the house in which it originated, with a statement of the objections which have required me to withold from it my approval.

In the performance of this duty prescribed by the constitution, I have been compelled to resist the deep sympathies of my own heart in favor of the humane purpose sought to be accomplished, and to overcome the reluctance with which I dissent from the conclusions of the two houses of Congress, and present my own opinions in opposition to the action of a coördinate branch of the government, which possesses so fully my confidence and respect.

If, in presenting my objections to this bill, I should say more than strictly belongs to the measure, or is required for the discharge of my official obligation, let it be attributed to a sincere desire to justify my act before those whose good opinion I so highly value, and to that earnestness which springs from my deliberate conviction, that a strict adherence to the terms and purposes of the federal compact offers the best, if not the only, security for the preservation of our blessed inheritance of representative liberty.

The bill provides in substance:

First. That ten millions of acres of land be granted to the several States, to be apportioned among them in the compound ratio of the geographical area, and representation of said States in the House of Representatives.

Second. That wherever there are public lands in a State

subject to sale at the regular price of private entry, the proportion of said ten millions of acres falling to such State, shall be selected from such lands within it; and that to the States in which there are no such public lands, land scrip shall be issued to the amount of their distributive shares, respectively; said scrip not to be entered by said States, but to be sold by them, and subject to entry by their assignees, provided that none of it shall be sold at less than one dollar per acre, under penalty of forfeiture of the same to the United States.

Third. That the expenses of the management and superintendence of said lands, and of the moneys received therefrom, shall be paid by the States to which they may belong, out of the treasury of said States.

Fourth. That the gross proceeds of the sales of such lands, or land scrip so granted, shall be invested by the several States in safe stocks, to constitute a perpetual fund, the principal of which shall remain forever undiminished, and the interest to be appropriated to the maintenance of the indigent insane within the several States.

Fifth. That annual returns of lands or scrip sold shall be made by the States to the Secretary of the Interior, and the whole grant be subject to certain conditions and limitations prescribed in the bill, to be assented to by legislative acts of said States.

This bill, therefore, proposes that the federal government shall make provision, to the amount of the value of ten millions of acres of land, for an eleemosynary object within the several States, to be administered by the political authority of the same; and it presents at the threshold the question, whether any such act, on the part of the federal government, is warranted and sanctioned by the constitution, the provisions and principles of which are to be protected and sustained as a first and paramount duty.

It cannot be questioned that if Congress have power to

make provision for the indigent insane without the limits of this District, it has the same power to provide for the indigent who are not insane, and thus to transfer to the federal government the charge of all the poor in all the States. It has the same power to provide hospitals and other local establishments for the care and cure of every species of human infirmity, and thus to assume all that duty of either public philanthropy, or public necessity, to the dependent, the orphan, the sick, or the needy, which is now discharged by the States themselves, or by corporate institutions, or private endowments existing under the legislation of the States. The whole field of public beneficence is thrown open to the care and culture of the federal government. Generous impulses no longer encounter the limitations and control of our imperious fundamental law; for, however worthy may be the present object in itself, it is only one of a class. It is not exclusively worthy of benevolent regard. Whatever considerations dictate sympathy for this particular object apply, in like manner, if not in the same degree, to idiotcy, to physical disease, to extreme destitution. If Congress may and ought to provide for any one of these objects, it may and ought to provide for them all. And if it be done in this case, what answer shall be given when Congress shall be called upon, as it doubtless will be, to pursue a similar course of legislation in the others? It will, obviously, be vain to reply that the object is worthy, but that the application has taken a wrong direction.

The power will have been deliberatively assumed; the general obligation will, by this act, have been acknowledged, and the question of means and expediency will alone be left for consideration. The decision, upon the principle, in any one case, determines it for the whole class. The question presented, therefore, clearly is, upon the constitutionality and propriety of the federal government assuming to enter into a novel and vast field of legislation,

namely, that of providing for the care and support of all those, among the people of the United States, who, by any form of calamity, become fit objects of public philanthropy.

I readily, and I trust feelingly, acknowledge the duty incumbent on us all, as men and citizens, and as among the highest and holiest of our duties, to provide for those who, in the mysterious order of Providence, are subject to want, and to disease of body or mind; but, I cannot find any authority, in the constitution, for making the federal government the great almoner of public charity throughout the United States. To do so would, in my judgment, be contrary to the letter and spirit of the constitution, and subversive of the whole theory upon which the union of these States is founded. And if it were admissible, to contemplate the exercise of this power for any object whatever, I cannot avoid the belief that it would, in the end, be prejudicial, rather than beneficial, to the noble offices of charity, to have the charge of them transferred from the States to the federal government. Are we not too prone to forget that the federal Union is the creature of the States, not they of the federal Union? We were the inhabitants of colonies, distinct in local government one from the other, before the Revolution. By that Revolution the colonies each became an independent State. They achieved that independence, and secured its recognition, by the agency of a consulting body, which, from being an assembly of the ministers of distinct sovereignties, instructed to agree to no form of government which did not leave the domestic concerns of each State to itself, was appropriately denominated a Congress. When, having tried the experiment of the confederation, they resolved to change that for the present federal Union, and thus to confer on the federal government more ample authority, they scrupulously measured such of the functions of their cherished sovereignty as they chose to delegate to the general government. With this aim,

and to this end, the fathers of the republic framed the constitution, in and by which the independent and sovereign States united themselves for certain specified objects and purposes, and for those only, leaving all powers, not therein set forth, as conferred on one or another of the three great departments—the legislative, the executive, and the judicial—indubitably with the States. And, when the people of the several States had, in their State conventions, and thus alone, given effect and force to the constitution, not content that any doubt should, in future, arise as to the scope and character of this act, they ingrafted thereon the explicit declaration, that "The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Can it be controverted, that the great mass of the business of government, that involved in the social relations, the internal arrangements of the body politic, the mental and moral culture of men, the development of local resources of wealth, the punishment of crimes in general, the preservation of order, the relief of the needy, or otherwise unfortunate members of society, did, in practice, remain with the States,—that none of these objects of local concern are, by the constitution, expressly or impliedly prohibited to the States, and that none of them are, by any express language of the constitution, transferred to the United States? Can it be claimed, that any of these functions of local administration and legislation are vested in the federal government by any implication? I have never found anything in the constitution, which is susceptible of such a construction. No one of the enumerated powers touches the subject, or has even a remote analogy to it. The powers conferred upon the United States have reference to federal relations, or to the means of accomplishing or executing things of federal relation. So, also, of the same character are the powers taken away from the States by enumera-

tion. In either case, the powers granted, and the powers restricted, were so granted or so restricted only where it was requisite for the maintenance of peace and harmony between the States, or for the purpose of protecting their common interests, and defending their common sovereignty, against aggression from abroad or insurrection at home.

I shall not discuss the question of power sometimes claimed for the general government, under the clause of the eighth section of the constitution, which gives Congress the power "to lay and collect taxes, duties, imposts, and excises, to pay debts, and provide for the common defence and general welfare of the United States," because, if it has not already been settled upon sound reason and authority, it never will be. I take the received and just construction of that article, as if written to lay and collect taxes, duties, imposts, and excises, *in order* to pay the debts, and *in order* to provide for the common defence and general welfare. It is not a substantive general power to provide for the welfare of the United States, but is a limitation on the grant of power to raise money by taxes, duties, and imposts. If it were otherwise, all the rest of the consitution, consisting of carefully enumerated and cautiously guarded grants of specific powers, would have been useless, if not delusive. It would be impossible, in that view, to escape from the conclusion, that these were inserted only to mislead for the present, and instead of enlightening and defining the pathway of the future, to involve its action in the mazes of doubtful construction, Such a conclusion the character of the men who framed that sacred instrument will never permit us to form. Indeed, to suppose it susceptible of any other construction would be to consign all the rights of the States, and of the people of the States, to the mere discretion of Congress, and thus to clothe the federal government with authority to control the sovereign States, by which the States would

have been dwarfed into provinces or departments, and all sovereignty vested in an absolute consolidated central power, against which the spirit of liberty has so often, and in so many countries, struggled in vain. In my judgment you cannot, by tributes to humanity, make any adequate compensation, for the wrong you would inflict, by removing the sources of power and political action from those who are to be thereby affected. If the time shall ever arrive when, for an object appealing however strongly to our sympathies, the dignity of the States shall bow to the dictation of Congress, by conforming their legislation thereto, when the power, and majesty, and honor of those who created shall become subordinate to the thing of their creation, I but feebly utter my apprehensions when I express my firm conviction that we shall see "the beginning of the end."

Fortunately, we are not left in doubt as to the purpose of the constitution, any more than as to its express language; for, although the history of its formation, as recorded in the Madison papers, shows that the federal government, in its present form, emerged from the conflict of opposing influences, which have continued to divide statesmen from that day to this, yet the rule of clearly defined powers, and of strict construction, presided over the actual conclusion and subsequent adoption of the constitution.

President Madison, in the Federalist, says: "The powers delegated by the proposed constitution to the federal government are few and defined. Those which are to remain in the State governments, are numerous and indefinite. Its" (the general government's) "jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects."

In the same spirit, President Jefferson invokes "the support of the State governments in all their rights as the most competent administrations for our domestic concerns, and the surest bulwark against anti-republican tendencies" And President Jackson said, that our true strength and wis-

dom are not promoted by invasions of the rights and powers of the several States, but that, on the contrary, they consist, "not in binding the States more closely to the centre, but in leaving each more unobstructed in its proper orbit."

The framers of the constitution, in refusing to confer on the federal government any jurisdiction over these purely local objects, in my judgment, manifested a wise forecast, and broad comprehension of the true interests of these objects themselves. It is clear, that public charities within the States, can be efficiently administered only by their authority. The bill before me concedes this, for it does not commit the funds it provides to the administration of any other authority.

I cannot but repeat, what I have before expressed, that if the several States, many of which have already laid the foundation of munificent establishments of local beneficence, and nearly all of which are proceeding to establish them, shall be led to suppose, as they will be, should this bill become a law, that Congress is to make provision for such objects, the fountains of charity will be dried up at home, and the several States, instead of bestowing their own means on the social wants of their own people, may themselves, through the strong temptation, which appeals to States as to individuals, become humble suppliants for the bounty of the federal government, reversing their true relation to this Union.

Having stated my views of the limitation of the powers conferred by the eighth section of the first article of the constitution, I deem it proper to call attention to the third section of the fourth article, and to the provisions of the sixth article, bearing directly upon the question under consideration; which, instead of aiding the claim to power exercised in this case, tend, it is believed, strongly to illustrate and explain positions which, even without such support, I cannot regard as questionable.

The third section, of the fourth article of the constitu-

tion, is in the following terms: "The Congress shall have power to *dispose* of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claim of the United States, or of any particular State." The sixth article is as follows, to wit: that "All debts contracted and engagements entered into before the adoption of this constitution, shall be as valid against the United States under this constitution as under the confederation."

For a correct understanding of the terms used in the third section of the fourth article, above quoted, reference should be had to the history of the times in which the constitution was formed and adopted. It was decided upon in convention on the 17th September, 1787, and by it Congress was empowered to "dispose of," &c., "the territory or other property belonging to the United States." The only territory then belonging to the United States was that then recently ceded by the several States, to wit: by New York in 1781, by Virginia in 1784, by Massachusetts in 1785, and by South Carolina in August, 1787, only the month before the formation of the constitution. The cession from Virginia contained the following provision:

"That all the lands within the territory so ceded to the United States, and not reserved for, or appropriated to, any of the before-mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered a common fund for the use and benefit of such of the United States as have become or shall become members of the confederation or federal alliance of the said States, Virginia included, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide *disposed of* for that purpose, and for no other use or purpose whatsoever."

Here the object for which these lands are to be disposed

of is clearly set forth, and the power to dispose of them, granted by the third section of the fourth article of the constitution, clearly contemplates such disposition only. If such be the fact—and in my mind there can be no doubt of it—then you have again, not only, no implication in favor of the contemplated grant, but the strongest authority against it.

Furthermore, this bill is in violation of the faith of the government pledged in the act of January 28, 1847. The nineteenth section of that act declares, "That, for the payment of the stock which may be created under the provisions of this act, the sales of the public lands are hereby pledged; and it is hereby made the duty of the Secretary of the Treasury to use and apply all moneys which may be received into the treasury for the sales of the public lands after the first day of January, 1848, first to pay the interest on all stocks issued by virtue of this act; and, secondly, to use the balance of said receipts, after paying the interest aforesaid, in the purchase of said stocks at their market value," &c. The debts then contracted have not been liquidated, and the language of this section, and the obligations of the United States under it, are too plain to need comment.

I have been unable to discover any distinction, on constitutional grounds, or grounds of expediency, between an appropriation of ten millions of dollars directly from the money in the treasury, for the object contemplated, and the appropriation of lands presented for my sanction. And yet I cannot doubt, if the bill proposed ten millions of dollars from the treasury of the United, States for the support of indigent insane in the several States, that the constitutional question involved in the act would have attracted forcibly the attention of Congress.

I respectfully submit that, in a constitutional point of view, it is wholly immaterial whether the appropriation be in money or in land.

The public domain, is the common property of the Union, just as much as the surplus proceeds of that, and of duties on imports, remaining unexpended in the treasury. As such, it has been pledged, is now pledged, and may need to be so pledged again, for public indebtedness.

As property, it is distinguished from actual money chiefly in this respect: that its profitable management sometimes requires that portions of it be appropriated to local objects in the States wherein it may happen to lie, as would be done by any prudent proprietor to enhance the sale-value of his private domain. All such grants of land are, in fact, a disposal of it for value received; but they afford no precedent, or constitutional reason, for giving away the public lands. Still less do they give sanction, to appropriations for objects, which have not been intrusted to the federal government, and therefore belong exclusively to the States.

To assume that the public lands are applicable to ordinary State objects, whether of public structures, police, charity, or expenses of State administration, would be to disregard, to the amount of the value of the public lands, all the limitations of the constitution, and confound, to that extent, all distinctions between the rights and powers of the States and those of the United States; for, if the public lands may be applied to the support of the poor, whether sane or insane—if the disposal of them, and their proceeds, be not subject to the ordinary limitations of the constitution, then Congress possesses unqualified power to provide for expenditures in the States by means of the public lands, even to the degree of defraying the salaries of governors, judges, and all other expenses of the government and internal administration, within the several States. The conclusion from the general survey of the whole subject is, to my mind, irresistible, and closes the question, both of right and of expediency, so far as regards the principle of the appropriation proposed in this bill. Would not the ad-

mission of such a power in Congress to dispose of the public domain, work the practical abrogation of some of the most important provisions of the constitution? If the systematic reservation of a definite portion of the public lands (the sixteenth sections) in the States, for the purpose of education, and occasional grants for similar purposes, be cited as contradicting these conclusions, the answer, as it appears to me, is obvious and satisfactory. Such reservations and grants, besides being a part of the conditions on which the proprietary right of the United States is maintained, along with the eminent domain of a particular State, and by which the public land remains free from taxation in the State in which it lies, as long as it remains the property of the United States, are the acts of a mere land-owner, disposing of a small share of his property in a way to augment the value of the residue, and in this mode to encourage the early occupation of it by the industrious and intelligent pioneer.

The great example of apparent donation of lands to the States, likely to be relied upon as sustaining the principles of this bill, is the relinquishment of swamp lands to the States in which they are situated; but this, also, like other grants already referred to, was based expressly upon grounds, clearly distinguishable in principle from any, which can be assumed for the bill herewith returned, viz: upon the interest and duty of the proprietor. They were charged, and not without reason, to be a nuisance to the inhabitants of the surrounding country. The measure was predicated, not only upon the ground of the disease inflicted upon the people of the States, which the United States could not justify, as a just and honest proprietor, but also upon an express limitation of the application of the proceeds, in the first instance, to purposes of levees and drains, thus protecting the health of the inhabitants, and, at the same time, enhancing the value of the remaining lands belonging to the general gov-

ernment. It is not to be denied that Congress, while administering the public lands as a proprietor, within the principle distinctly announced in my annual message, may, sometimes, have failed to distinguish accurately between objects which are, and which are not, within its constitutional powers.

After the most careful examination, I find but two examples, in the acts of Congress, which furnish any precedent for the present bill, and those examples will, in my opinion, serve rather as a warning, than as an inducement to tread in the same path. The first, is the act of March 3d, 1819, granting a township of land, to the Connecticut asylum for the education of the deaf and dumb; the second, that of April 5th, 1826, making a similar grant of land to the Kentucky asylum for teaching the deaf and dumb: the first, more than thirty years after the adoption of the constitution, and the second, more than a quarter of a century ago.

These acts were unimportant, as to the amount appropriated, and, so far as I can ascertain, were passed on two grounds: first, that the object was a charitable one; and secondly, that it was national. To say that it was a charitable object, is only to say that it was an object of expenditure proper for the competent authority; but it no more tended to show that it was a proper object of expenditure by the United States than is any other purely local object, appealing to the best sympathies of the human heart, in any of the States. And the suggestion, that a school for the mental culture of the deaf and dumb in Connecticut, or Kentucky, is a national object, only shows how loosely this expression has been used when the purpose was to procure appropriations by Congress. It is not perceived how a school of this character is otherwise national, than is any establishment of religious or moral instruction. All the pursuits of industry, everything which promotes the

material or intellectual well-being of the race, every ear of corn or boll of cotton which grows, is national in the same sense, for each one of these things goes to swell the aggregate of national prosperity and happiness of the United States; but it confounds all meaning of language to say, that these things are "national," as equivalent to "federal," so as to come within any of the classes of appropriation for which Congress is authorized by the constitution to legislate.

It is a marked point in the history of the constitution, that when it was proposed to empower Congress to establish a university, the proposition was confined to the District intended for the future seat of government of the United States, and that even that proposed clause was omitted, in consideration of the exclusive powers conferred on Congress to legislate for that District. Could a more decisive indication of the true construction and the spirit of the constitution, in regard to all matters of this nature have been given? It proves, that such objects were considered by the convention as appertaining to local legislation only, that they were not comprehended, either expressly or by implication, in the grant of general power to Congress, and that, consequently, they remained with the several States.

The general result at which I have arrived, is the necessary consequence of those views of the relative rights, powers, and duties of the States and of the federal government which I have long entertained, and often expressed, and in reference to which my convictions do but increase in force with time and experience.

I have thus discharged the unwelcome duty of respectfully stating my objections to this bill, with which I cheerful submit the whole subject to the wisdom of Congress.

FRANKLIN PIERCE.

WASHINGTON, *May* 3, 1854.